

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**ATCO AUTO SERVICES, INC.,  
  
Respondent.**

**Docket No. FMCSA-2009-0098<sup>1</sup>  
(Eastern Service Center)**

**ORDER ON BINDING ARBITRATION**

**1. Background**

On February 3, 2009, the New Hampshire Division Administrator for the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to Respondent, Attco Auto Services, Inc., proposing a civil penalty of \$2,000 for two alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the NOC, which was based on a January 9, 2009, compliance review, charged Respondent with two violations of 49 CFR 390.35, with a proposed civil penalty of \$1,000 per count, for making or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.

Respondent replied to the NOC on February 6, 2009, requesting binding arbitration with regard to the civil penalty. By letter served April 2, 2009, Claimant, the Field Administrator for FMCSA's Eastern Service Center, said that he did not object to the request for binding arbitration. The request is granted.

**2. Procedures**

The arbitration process will be conducted pursuant to FMCSA's published

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<sup>1</sup> The prior case number of this matter was NH-2009-0011-US0020.

guidance on this subject.<sup>2</sup> The parties will work together to select an arbitrator and establish procedures that will govern the binding arbitration. A representative of FMCSA will contact Respondent to answer any questions it may have about the binding arbitration process, including the choosing of an arbitrator.

a. Options in Choosing the Arbitrator

The parties may choose an arbitrator from the following sources:

1. Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration;
2. Uncompensated neutral parties from local communities; or
3. Compensated neutral parties from outside the government, whose costs are to be shared by agreement of the parties.

The selected arbitrator will assist the parties in developing procedures and preparing an Arbitration Agreement.

b. Arbitration Format

Respondent may have attorney or non-attorney representation, or it may appear *pro se*, that is, it may represent itself in the arbitration proceedings. With the consent of both parties, the arbitrator may conduct hearings in person or by telephone, video conferencing, or computer.

Each party will present evidence supporting the penalty and terms of payment it considers appropriate. The evidence may not contest whether or not the violation occurred because Respondent has conceded the violation as a condition of arbitration.

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<sup>2</sup> See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

Neither written submissions nor oral argument may contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the arbitrator, each party will present to the arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty and a proposed payment plan. Before opening the envelopes, the arbitrator will determine the appropriate civil penalty and payment plan based upon the evidence presented during the proceeding. The arbitrator will provide his or her determinations in writing to the parties. The arbitrator will then open the envelopes and select the civil penalty and payment plan that is closer to the arbitrator's determinations. The arbitrator has the discretion to select one party's proposed total civil penalty and the other party's proposed payment plan.

c. Maximum and Minimum Penalty Amounts

The parties may not propose an amount higher than the amount assessed in the NOC. There is no minimum statutory penalty for the violation.

d. Limited Appeals

The arbitration award is binding on the parties. Appeals from arbitration awards are generally limited to fraud or misconduct in the proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 10.

*It Is So Ordered.*

  
Rose A. McMurray  
Assistant Administrator

Federal Motor Carrier Safety Administration

7.17.05  
Date

# CERTIFICATE OF SERVICE

This is to certify that on this 21 day of July, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Robert Hyatt, President.  
Atco Auto Services, Inc.  
7 Crescent St.  
Salem, NH 03079  
(603) 893-3940

One Copy  
U.S. Mail

John C. Bell, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
802 Cromwell Park Dr., Suite N  
Glen Burnie, MD 21061  
(443) 703-2249

One Copy  
U.S. Mail

Robert W. Miller, Field Administrator  
Federal Motor Carrier Safety Administration  
Eastern Service Center  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

One Copy  
U.S. Mail

Kevin Carter  
New Hampshire Division Administrator  
Federal Motor Carrier Safety Administration  
70 Commerical St., Suite 102  
Concord, NH 03301

One Copy  
U.S. Mail

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Original  
Personal Delivery

Jennie Miller